

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

BELLSOUTH PUBLIC COMMUNICATIONS, )  
INC., )

PLAINTIFF, )

VS. )

CV00-H-2779-S

TELTRUST COMMUNICATIONS )  
SERVICES, INC., )

DEFENDANT. )

*Jm*

**ENTERED**

FEB 26 2001

MEMORANDUM OF DECISION

The court has before it the January 9, 2001 motion of plaintiff for summary judgment in its favor and against defendant (a) with regard to its claims against defendant set out in plaintiff's complaint and (b) with regard to defendant's claim against plaintiff set out in defendant's counterclaim filed November 9, 2000 and the amended counterclaim filed December 28, 2000. Pursuant to the January 22, 2001 order the motion for summary judgment is now under submission. In support of the motion BellSouth Public Communications, Inc. ("BellSouth") filed on January 19, 2001 the affidavit of Selene Patterson and its attachment. Teltrust Communications Services, Inc. ("Teltrust") has failed to file or submit anything in opposition to any aspect of the motion.

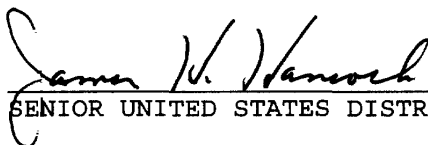
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This action arises out of a comprehensive agreement between the parties with an effective date of February 24, 1997. On the date the parties signed the agreement (BellSouth on February 26, 1997 and Teltrust on February 28, 1997), the parties also signed three addendums to the agreement. Two additional addendums were subsequently executed by the parties, one in February and one in May of 1998. All of the foregoing is herein referred to as the "Agreement." It is undisputed that Teltrust generally breached the agreement by failing to provide Weekly Income Summaries, Month End Statements and commissions pursuant to the obligations imposed upon Teltrust by the Agreement. It is specifically undisputed that (a) for the period April 3, 2000 to April 8, 2000 and the period from May 8, 2000 to January 19, 2001 Teltrust breached the Agreement by failing to provide BellSouth the Paystation and Inmate Weekly Income Summaries required to be provided by the Agreement; (b) during the period March 2000 to January 19, 2001 Teltrust breached the Agreement by failing to provide BellSouth the Paystation and Inmate Month End Statements required to be provided by the Agreement; (c) for the period December 27, 1999 to January 19, 2001 Teltrust breached the Agreement by failing to pay any commissions to BellSouth pursuant to the Weekly Income Summaries; and (d) for the period April 1, 1999 to January 19, 2001 Teltrust breached the Agreement by failing to pay commissions to BellSouth in accordance with the

Agreement pursuant to the Month End Statements. It is further undisputed that Teltrust, as a result of such breaches, owes BellSouth commissions in the amount of \$9,800,000. There is simply no dispute as to any material fact, and the motion of BellSouth for summary judgment in its favor with regard to its claim against Teltrust is due to be granted. Summary judgment in its favor and against Teltrust in the amount of \$9,800,000 will be granted by separate order.

A non-movant cannot rely on mere allegations in its counterclaim to resist a motion for summary judgment by the defendant to the counterclaim but must come forward with evidence of specific facts supporting the counterclaim where, as here, the allegations of the counterclaim are denied. Teltrust has failed to present to the court any evidence of any kind in opposition to the motion for summary judgment directed to its counterclaim. There is simply no evidence to support the counterclaim, and the motion by BellSouth for summary judgment in its favor with regard to the counterclaim of Teltrust will also be granted by separate order.

DONE this 26<sup>th</sup> day of February, 2001.

  
SENIOR UNITED STATES DISTRICT JUDGE